

March 17, 2025

RE: Oppose, SB 2290

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA submits the following comments in opposition to [Senate Bill 2290](#) which broadens the definition of malice which exists in North Dakota case law currently.

The proposed amendment to the statute regarding exemplary and punitive damages in North Dakota eliminates the requirement to show clear and convincing evidence of “actual malice” to simply a clear and convincing showing of “malice.” The proposed amendment significantly broadens long-standing precedent and expands the definition of malice to “a. A direct intention to injure another; or b. A reckless disregard of the rights of another and any consequences”. However, the North Dakota Supreme Court in *Zander v. Morsette*, 2021 ND 84, ¶ 32, 959 N.W.2d 838, 846 held that under an “actual malice” standard, “grossly negligent or extremely reckless” conduct absent “intent to injury or personal ill will toward the Plaintiffs” is insufficient “to support a finding of actual malice.” *Zander v. Morsette*, 2021 ND 84, ¶ 32, 959 N.W.2d 838, 847.

The proposed amendment is concerning, because it would expand the scope of conduct for which punitive damages may be awarded in North Dakota. If North Dakota expands the definition set forth in the statute to include “reckless disregard” for the rights of another the imposition of punitive damages will be allowed due to “grossly negligent and reckless” conduct, which was previously prohibited by the North Dakota Supreme Court in *Zander*.

Contrary to longstanding legal precedent in North Dakota, SB2290 would allow the awarding of punitive damages for much less than intentional wrongdoing. The bill’s new and extremely broad standard of gross negligence would conflate punitive conduct with negligence and would likely result in jury confusion with many nuclear verdicts with punitive damage awards.

The very low bar of gross negligence, which conflates punitive conduct with ordinary negligence would generate excessive and un-warranted punitive damage awards, with the jury focusing on prejudicial factors focused on the wealth of the defendant, the profitability of the conduct to the defendant, and the plaintiff’s financial vulnerability in deciding the amount to award. This may bolster a “David vs. Goliath” theme by plaintiffs’ attorneys at trial and lead to much larger awards against civil defendants.



North Dakotans are already paying a tort tax per household of \$2913 every year due to excessive litigation. (U.S. Chamber of Commerce, Tort Costs In America, Nov. 2024).

APCIA respectfully requests the committee to remove the proposed amendment to expand the scope and broaden the definition of malice.

Respectfully,

Brooke Kelley

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